LE COPY

Office - Supreme Court, U.
FILED
OCT 19 1953
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

No. 412

PEOPLE OF THE STATE OF ILLINOIS,
ON RELATION OF GEORGE E. SANKSTONE,
Appellant,

vs.

EDMUND K. JARECKI, Judge of the County Court of Cook County, Illinois, RICHARD J. DALEY, County Clerk of Cook County, Illinois, JOHN GUTKNECHT, State's Attorney, Cook County, Illinois, Ex Officio acting as the COUNTY OFFICERS ELECTORAL BOARD OF COOK COUNTY, ILLINOIS, LEAH M. WILEY, CHARLES F. CARPENTIER, Secretary of State, of the State of Illinois, and SIDNEY T. HOLZMAN, MARIE H. SUTHERS, JOHN P. DALY, comprising the BOARD OF ELECTION COMMISSIONERS for Chicago, Chicago Heights, Berwyn and Harvey, the Town of Cicero and the Villages of Summit, Stickney, Morton Grove, Elmwood Park, Skokie and Lyons, in the County of Cook and State of Illinois, and LATHAM CASTLE, Attorney General of the State of Illinois,
Appellees.

APPELLEES', COUNTY OFFICIALS ELECTORAL BOARD OF COOK COUNTY, ILLINOIS AND BOARD OF ELECTION COMMISSIONERS FOR CHICAGO, et al., STATEMENT MAKING AGAINST THE JURISDICTION OF THIS COURT, MOTION TO DISMISS THE APPEAL OR TO AFFIRM THE JUDGMENT OF THE DISTRICT COURT, and BRIEF IN SUPPORT OF SUCH MOTION.

JOHN GUTKNECHT, State's Attorney of Cook County,
Attorney for EDMUND K. JARECKI, Judge of the County Court of Cook County, RICHARD J. DALEY, County Clerk of Cook County, JOHN GUTKNECHT, State's Attorney of Cook County, all Ex-officio acting as the COUNTY OFFICERS ELECTORAL BOARD OF COOK COUNTY.

BERNARD J. KORZEN,
Attorney for SIDNEY T. HOLZMAN, MARIE H. SUTHERS, JOHN P. DALY, comprising the Board Election Commissioners for Chicago, etc.

JOHN F. TYRRELL,
Attorney for LEAH M. WILEY.

GORDON NASH,
VINCENT P. FLOOD,
JAMES C. MURRAY,
Assistant State's Attorneys.

BERNARD J. KORZEN,
Attorney for Board of Election Commissioners.

The Scheffer Press, Inc.—ANdover 3-6850

INDEX.

PAGE

Brief in Support of Motion to Dismiss or Affirm 11

1. Since this case involves purely local political issues, the District Court had no power to act. 12
2. This proceeding is one against the State of Illinois and therefore inhibited by the Doctrine of Sovereign Immunity. 13
3. The appellant's substantive contentions are destitute of merit. 14
4. Suggestions as to lack of jurisdiction of this Court because the instant matter was ruled upon by a single Judge. 15

Conclusion 16

Certificate 17

Grounds upon which the District Court's jurisdiction was challenged. 6

Motion to Dismiss this appeal or in the alternative to affirm the judgment without further briefs or arguments. 9

Suggestions with respect to appellant's Motion for a Temporary Injunction. 8

Summary and short statement of the matter involved. 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

No. 412

PEOPLE OF THE STATE OF ILLINOIS,
ON RELATION OF
GEORGE E. SANKSTONE,

Appellant,

vs.

EDMUND K. JARECKI, Judge of the County Court of Cook County, Illinois, RICHARD J. DALEY, County Clerk of Cook County, Illinois, JOHN GUTKNECHT, States Attorney, Cook County, Illinois, Ex officio acting as the COUNTY OFFICERS ELECTORAL BOARD OF COOK COUNTY, ILLINOIS, LEAH M. WILEY, CHARLES F. CARPENTIER, Secretary of State, of the State of Illinois, and SIDNEY T. HOLZMAN, MARIE H. SUTHERS, JOHN P. DALY, comprising the BOARD OF ELECTION COMMISSIONERS for Chicago, Chicago Heights, Berwyn and Harvey, The Town of Cicero and the Villages of Summit, Stickney, Morton Grove, Elmwood Park, Skokie and Lyons, in the County of Cook and State of Illinois, and LATHAM CASTLE, Attorney General of the State of Illinois,

Appellees.

APPELLEES', COUNTY OFFICIALS ELECTORAL BOARD OF COOK COUNTY, ILLINOIS AND BOARD OF ELECTION COMMISSIONERS FOR CHICAGO, et al., STATEMENT MAKING AGAINST THE JURISDICTION OF THIS COURT, MOTION TO DISMISS THE APPEAL OR TO AFFIRM THE JUDGMENT OF THE DISTRICT COURT, and BRIEF IN SUPPORT OF SUCH MOTION.

Appellees, EDMUND K. JARECKI, Judge of the County Court of Cook County, Illinois, RICHARD J. DALEY, County Clerk of Cook County, Illinois and JOHN GUTKNECHT, State's Attorney of Cook County, ex-officio, acting as the COUNTY OFFICERS ELECTORAL BOARD of Cook County, Illinois, SIDNEY T. HOLZMAN, MARIE H. SUTHERS, and JOHN P. DALY, comprising the Board of Election Commissioners for Chicago, Chicago Heights, Berwyn, Harvey and the towns of Cicero and the villages of Summit, Stickney, etc. in the County of Cook and State of Illinois, and LEAH M. WILEY present this statement making against this court's jurisdiction in the above entitled cause, which statement is as follows:

Summary and Short Statement of the Matter Involved.

On September 21, 1953, GEORGE E. SANKSTONE, a resident of Cook County, filed a complaint in the District Court for the Northern District of Illinois, Eastern Division, against certain State of Illinois and Cook County, Illinois officials and one LEAH M. WILEY, a resident of Cook County.

The complaint involves matters concerning an election for Circuit and Superior judges of Cook County to be held on November 3, 1953, and attacks on alleged constitutional grounds the following provisions of the Illinois Election Code (Ill. Rev. Stat. 1953, Chap. 47, Sec. 10-2).

"Any group of persons hereafter desiring to form a new political party throughout the State, or in any political subdivision greater than a county and less than the State, shall file with the Secretary of State a petition, as hereinafter provided; and any such

group of persons hereafter desiring to form a new political party, in any county shall file such petition with the county clerk; and any such group of persons hereafter desiring to form a new political party in any municipality or district less than a county shall file such petition with the clerk of Board of Election Commissioners of such municipality or district, as the case may be. Any such petition for the formation of a new political party throughout the State, or in any such district or political subdivision, as the case may be, shall declare as concisely as may be the intention of the signers thereof to form such new political party in the State, or in such district or political subdivision; shall state in not more than five (5) words the name of such new political party; shall contain a complete list of candidates of such party for all offices to be filled in the State, or such district or political subdivision as the case may be, at the next ensuing election that to be held; and, if such new political party shall be formed for the entire State, shall be signed by not less than twenty-five thousand (25,000) qualified voters: Provided, that included in the aggregate total of twenty-five thousand (25,000) signatures are the signatures of two hundred (200) qualified voters from each of at least fifty (50) counties within the State. *If such new political party shall be formed for any district or political subdivision less than the entire State, such petition shall be signed by qualified voters equaling in number not less than five (5) per cent nor more than eight (8) per cent of the number of voters who voted at the next preceding general election in such district or political subdivision in which such district or political subdivision voted as a unit for the election of officers to serve its respective territorial area: Provided, that the maximum number of voters signing such petition may be increased to 25 whenever such amount is greater than*

BLEED. THROUGH POOR COPY

the eight per cent (8%) limit hereinabove specified." (Emphasis supplied.)

This identical provision of the Illinois Election Code was unsuccessfully attacked on grounds similar to those raised by the plaintiff herein in the case of *McDougall* v. *Green*, 335 U.S. 381.

By his complaint which is entitled, a complaint for mandamus and for equitable relief, the plaintiff asserts that he filed nominating petitions with the County Clerk of Cook County, which petitions entered the name of GEORGE E. SANKSTONE as a candidate under the designation and appellation of Judicial Nonpartisan Organization, for judge of the Superior Court of Cook County, Illinois, for the full six year term to be voted on at the judicial election to be held on November 3, 1953 in Cook County, Illinois. The complaint alleges that the petitions were in the form provided and in full accordance with the Illinois election laws.

The complaint alleges that the defendant, LEAH M. WILEY, a resident of Cook County, filed objections to the said nominating petitions filed by GEORGE E. SANKSTONE. It appears from the complaint that LEAH M. WILEY objected to the said petitions of GEORGE E. SANKSTONE for various and sundry reasons including the failure of the said GEORGE E. SANKSTONE to have the minimum number of signatures required by law for the nomination of a candidate for Judge of the Superior Court.

Under the provisions of said Section of the Illinois Election code, in order to form a new political party for the November 3, 1953 Cook County judicial election, petitions for such new political party or new party candi-

date must be signed by not less than 121,400 qualified voters nor more than 194,240 qualified voters.

It appears from the objections of LEAH M. WILEY, which are attached to the plaintiff's complaint as an exhibit, that GEORGE E. SANKSTONE'S nominating petition contained only 5,097 purported names which is at least 116,309 less than the minimum number required by the said provisions of the Illinois election code.

Subsequent to the filing of said objections by the said LEAH M. WILEY, a hearing was had upon SANKSTONE'S petition and WILEY'S objections thereto before the defendants, EDMUND K. JARECKI, Judge of the County Court of Cook County, RICHARD J. DALEY, County Clerk of Cook County and JOHN GUTKNECHT, State's Attorney of Cook County, Illinois, ex-officio, acting as the County Officers Electoral Board of Cook County, Illinois. At the hearing of said Electoral Board, it was found that the petitions of GEORGE E. SANKSTONE did not contain a sufficient number of signatures to equal at least five percent of the total number of persons who voted at the next preceding general election in Cook County, as required by said section of the Election Code. Based upon such findings, the Board declared the nominating papers of GEORGE E. SANKSTONE as a candidate of the Judicial Non-partisan Organization invalid and ordered that the name of said GEORGE E. SANKSTONE as a candidate of the Judicial Non-partisan Organization *not* be printed on the ballot at the judicial election to be held on November 3, 1953 for judge of the Superior Court of Cook County, Illinois.

The complaint also asserts various technical objections to the convening of the said Electoral Board and the

procedure it followed, but it nowhere asserts that GEORGE E. SANKSTONE as a candidate of the Judicial Non-partisan Organization had filed more than 5,097 purported signatures on his nominating petitions. The complaint charges that the complainant has been denied due process of law; that his alleged constitutional right to become a candidate for judge of the Superior Court of Cook County, Illinois has been violated; and that part of the Illinois statutes concerning the number of names required on a nominating petition is arbitrary, unreasonable, and unconstitutional and that the Electoral Board denied him due process of law, and acted without authority and was without jurisdiction.

The complaint prays for the convening of a three judge court under the provisions of Sec. 2884 of Title 28 of the U. S. Code, and an interlocutory injunction against the defendants restraining the Cook County Electoral Board from the enforcement of its decision. The complaint further prays for relief which would, in effect, hold the provisions of the Illinois Election Code unconstitutional and would force the Cook County election officials to print the name of GEORGE E. SANKSTONE as a candidate of the Judicial Non-partisan Organization on the ballot for the election of Superior Court judges on November 3, 1953.

Grounds Upon Which the District Court's Jurisdiction Was Challenged:

These appellees, under a special and limited appearance, challenged the District court's jurisdiction on grounds which are summarized as follows:

1. The subject matter of this cause of action is a political controversy and not one concerning the con-

stitutional or civil rights of the complainant and therefore the District Court had no jurisdiction in law or in equity to grant the appellant the relief he seeks.

2. Since the appellees are sued in their official capacity and since the object of these proceedings is to govern and control action with respect to elections, this suit is therefore inhibited by the state's sovereign immunity.

3. The necessary allegations of diversity of citizenship and the amount involved in this cause are not alleged in the complainant's complaint to give jurisdiction to the district court.

4. Insofar as jurisdiction is sought to be predicated on the civil rights act and the 14th Amendment to the Constitution of the United States, the complaint states no cause of action within the purview of such civil rights act or the said amendment.

The Honorable William J. Campbell, Judge of the United States District Court, refused to convene a three judge court for want of the complaint to allege a substantial federal question; denied plaintiff's motion for a temporary restraining order; and dismissed plaintiff's complaint.

The appellant has filed a motion to advance this case in conformance with Rule 20 of this Court and for Temporary Injunction.

Suggestions with Respect to Appellant's Motion for a Temporary Injunction.

The election to which the instant case applies is to be held within 17 days.

The ballots have been printed for the said election, the voting machines have been adjusted. To grant a temporary injunction would result in a disenfranchisement of all of the voters in Cook County, at the said election since there is insufficient time to reprint the ballots and reset the voting machines.

Therefore, in view of the lateness of the appellant's motion, in view of the great confusion that would result in Cook County in a consideration of it and for the reasons urged in support of appellees' brief in support of their motion to dismiss or affirm, it is respectfully submitted that the appellant's motion for temporary injunction be denied.

Motion to Dismiss This Appeal, or in the Alternative, to Affirm the Judgment without Further Briefs or Arguments.

The appellees for the reasons set forth in the foregoing statement of the *grounds upon which the District Court's jurisdiction was challenged* and as argued in the briefs in support of this motion, respectfully move and pray this Honorable Court to dismiss this appeal for want of jurisdiction; to dismiss this appeal for want of a substantial federal question; or in the alternative to affirm the judgment of the District Court without the filing of further briefs or the presentation of further arguments.

EDMUND K. JARECKI, Judge of the County Court of Cook County,

RICHARD J. DALEY, County Clerk of Cook County,

JOHN GUTKNECHT, State's Attorney of Cook County,

All Ex-officio acting as the COUNTY OFFICERS ELECTORAL BOARD OF COOK COUNTY

SIDNEY T. HOLZMAN,

MARIE H. SUTHERS,

JOHN P. DALY,

Comprising the Board of Election Commissioners for Chicago, Chicago Heights, Berwyn and Harvey, the Town of Cicero and the Villages of Summit, Stickney, Morton Grove, Elmwood Park, Skokie and Lyons, in the County of Cook, State of Illinois

LEAH M. WILEY.

BLEED. THROUGH POOR COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

No. 412

PEOPLE OF THE STATE OF ILLINOIS,
ON RELATION OF
GEORGE E. SANKSTONE,

Appellant,

vs.

EDMUND K. JARECKI, Judge of the County Court of Cook County, Illinois, RICHARD J. DALEY, County Clerk of Cook County, Illinois, JOHN GUTKNECHT, States Attorney, Cook County, Illinois, Ex officio acting as the COUNTY OFFICERS ELECTORAL BOARD OF COOK COUNTY, ILLINOIS, LEAH M. WILEY, CHARLES F. CARPENTIER, Secretary of State, of the State of Illinois, and SIDNEY T. HOLZMAN, MARIE H. SUTHERS, JOHN P. DALY, comprising the BOARD OF ELECTION COMMISSIONERS for Chicago, Chicago Heights, Berwyn and Harvey, The Town of Cicero and the Villages of Summit, Stickney, Morton Grove, Elmwood Park, Skokie and Lyons, in the County of Cook and State of Illinois, and LATHAM CASTLE, Attorney General of the State of Illinois,

Appellees.

BRIEF IN SUPPORT OF THE MOTION TO DISMISS OR AFFIRM.

Reference to Statement making against Jurisdiction for Statement of the Case.

The case is stated and the issues are delineated in the statement making against the jurisdiction of this court, ante, to which reference is made to avoid repetition of the substance thereof.

BLEED. THROUGH POOR COPY

ARGUMENT.

I. Since this case involves purely local political issues, the District Court had no power to act.

The case of *McDougall* v. *Green*, 335 U. S. 281 is decisive of all the issues tendered by the complainant's complaint in the instant case.

In the case of *McDougall* v. *Green*, 335 U. S. 281, this court, in denying an injunction in a case in which the constitutionality of the identical section of the Illinois Election Code was attacked as is attacked in the instant case (Ill. Rev. Stat. 1953, Chap. 46, Sec. 10-2), characterized questions identical to those raised in the instant complaint as "purely local, • • • having no federal constitutional aspect."

The trial court based its decision in the instant case on this court's opinion in the *McDougall* case.

To the same effect is the case of *Colegrove* v. *Green*, 328 U. S. 549, wherein this court declined to exercise its jurisdiction because the controversy involved political issues.

See also the case of *Blackman* v. *Stone*, 101 F. 2nd 500, wherein the Court of Appeals for the Seventh Circuit sustained the constitutionality of the provision of the Illinois Election Code attacked in the instant case.

II. This Proceeding is one against the State of Illinois and is therefore inhibited by the Doctrine of Sovereign Immunity.

In praying relief against appellee officials of the State of Illinois, the appellants confused the well settled rule that, although natural persons, including public officials, can be *prohibited* from performing unconstitutional acts, and this is true even though they claim to act under the purport of official authority, the equally well settled rule is that suits, not to *restrain* but to *coerce* the acts of state officials are suits against the state. This principle results from the self-evident fact that a state acts only by the official acts of its officers and that hence such acts, when not only authorized but compelled by law, are acts of the state. (See *Governor of Georgia* v. *Madrazo*, 26 U. S. 110, *New York Guaranty Company* v. *Steele*, 134 U. S. 230, and *Cunningham* v. *Macon & Brunswick Railroad Company*, 109 U. S. 446.)

Recently this court held that a suit to compel the officials of the State of Indiana to refund taxes alleged to have been unconstitutionally collected from the plaintiff, a foreign corporation, was a suit against the State. (*Ford Motor Company* v. *Department of Treasury of Indiana*, 323 U. S. 459.)

The appellants evidently distinguished between suits to compel state action in the form of making disbursement of money and suits to compel state action in the form of controlling an election. We do not perceive the distinction.

III. The appellant's substantive contentions are destitute of merit.

The appellant in a motion to advance this case for an immediate hearing and a temporary injunction presents as his sole ground of arbitrariness the fact that the section of the Illinois Election Code herein attacked requires only 25,000 signatures for a state-wide office while the provision with respect to less than a state-wide office, as applied to Cook County, in effect, requires 121,406 signatures.

In support of this contention, he cites two New York cases. As a matter of fact, the New York court has held that the legislature may constitutionally require a different minimum number of signatures for an office to be filled for some geographical territories than for similar offices representing other territories. *O'Rourke* v. *Cohen*, 265 N. Y. 318; 192 N.E. 833; to the same effect is 129 C.J.S. page 144.

Further, it is pertinent to observe that although the provision of the Illinois Election Code only requires 25,000 signatures over the entire state, the same must be obtained from 50 counties with a minimum of 200 signatures from each of said counties.

Cook County is the most populous county in the state of Illinois and contains some six million inhabitants (approximately 55% of the state's total population). It is obviously much easier to obtain a great volume of signatures in a densely populated small area than it is to obtain a considerable less number of signatures from areas that are sparsely populated.

In this connection, it is pertinent to observe that although the political party in the *McDougall* case (*McDougall* v. *Green*, 335 U. S. 381) were unable to comply with the provisions of the Illinois Election Code herein attacked insofar as state-wide offices were concerned, the party was able to comply with the provisions of the Illinois Election Code with respect to candidates for Cook County including judicial candidates. (cf. *Progressive Party* v. *Flynn*, 400 Ill. 102 at Page 111.)

It is respectfully submitted that petitioner's substantive contentions are destitute of merit.

IV. Suggestion as to lack of jurisdiction of this court because the instant matter was ruled upon by a single judge.

This court's attention is directed to the case of *Stratton* v. *St. Louis Southwestern Railway*, 282 U. S. 10 (1930) wherein this court indicated that a decision by a single judge under the provisions of Sec. 1253 of Title 28 is not reviewable by appeal to the Supreme Court but that the court may issue a writ of mandamus to the single judge to call to his aid two other judges for the hearing and determination of the application for injunction. (cf. *Ex Parte Gogdell, et al.*, 342 U. S. 162.)

CONCLUSION.

For the reasons indicated in the *Statement Making Against the Jurisdiction of This Court* and urged in this brief, appellees respectfully submit that the court should either dismiss this appeal or affirm the judgment appealed from without further briefs or arguments.

EDMUND K. JARECKI, Judge of the
County Court of Cook County,
RICHARD J. DALEY, County Clerk
of Cook County,
JOHN GUTKNECHT, State's Attorney
of Cook County,
All Ex-officio acting as the
COUNTY OFFICERS ELECTORAL BOARD
OF COOK COUNTY
By: JOHN GUTKNECHT,
State's Attorney of Cook County
SIDNEY T. HOLZMAN,
MARIE H. SUTHERS,
JOHN P. DALY,
Comprising the Board of Election
Commissioners for Chicago, etc.
By: BERNARD J. KORZEN
LEAH M. WILEY
By: JOHN F. TYRRELL

GORDON NASH
VINCENT P. FLOOD
JAMES C. MURRAY
Assistant State's Attorneys
BERNARD J. KORZEN
Attorney for Board of Election Commissioners

CERTIFICATE.

State of Illinois }
County of Cook } ss.

This is to certify Vincent P. Flood and James C. Murray are Assistant State's Attorneys and prepared foregoing, know the contents thereof and that the foregoing constitutes a true and accurate statement of the facts involved, that this motion and petition is urged in good faith, that the reasons offered in support of it are well founded in law and fact, and so that justice may be done.

VINCENT P. FLOOD
JAMES C. MURRAY

Subscribed and sworn to before
me a Notary Public this 17th
day of October A. D. 1953.
(Seal)

.....
Herbert Goldscheider
Notary Public